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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. This document contains the fifth report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA). It covers the period from 1 January to 30 June 1996, during which the peace process took a significant step forward with the signing, on 6 May 1996, of the Agreement on Social and Economic Aspects and Agrarian Situation. I shall convey a copy of this report to the United Nations High Commissioner for Human Rights, with a request that it be transmitted to the members of the United Nations Commission on Human Rights.

2. I appointed Mr. David Stephen as Director of the Mission with effect from 1 June 1996, to succeed Mr. Leonardo Franco, and notified the President of the General Assembly of this change in my letter of 8 May 1996 (A/50/954). I should like to pay tribute to Mr. Franco's important contribution to the process of setting up and running the Mission and to his dedication to the work entrusted to him.

3. Once again, I wish to thank the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their continued cooperation with the Mission, which has enabled it to function. I am also grateful to the Group of Friends of the Guatemalan Peace Process for their unswerving support for the Mission's efforts, which is crucial to the achievement of its objectives; to the Governments of Argentina, Brazil, Canada, Colombia, Italy, Spain and Sweden for contributing police personnel to the Mission; and to the Governments of Brazil, Spain, Sweden, Uruguay and Venezuela for providing the services of their military officers.

4. The Mission continued to receive support from the members of the United Nations system in Guatemala, represented by the Resident Coordinator of Operational Activities for Development of the United Nations System in Guatemala, for which I am very grateful. Also of note is the special contribution made by the United Nations Volunteers Programme through the 111 volunteer experts currently working in MINUGUA.

ANNEX

Fifth report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala

I. INTRODUCTION

1. The United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) continued to carry out its mandate of monitoring compliance by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) with the Comprehensive Agreement on Human Rights (hereinafter referred to as the Comprehensive Agreement), signed on 29 March 1994 (A/48/928-S/1994/448, annex I), and with the relevant aspects of the Agreement on Identity and Rights of Indigenous Peoples (hereinafter referred to as the Agreement on Indigenous Rights), signed on 31 March 1995 (A/49/882-S/1995/256, annex).

2. The report covers the period from 1 January to 30 June 1996, during which the Mission continued to receive complaints of alleged human rights violations and expanded its activities to strengthen human rights institutions. The international community continued to support the Mission's work through both financial contributions to the Trust Fund for the Guatemalan Peace Process and contributions of professionals and equipment.

3. The Mission continued its contacts with each of the parties, as stipulated in the Comprehensive Agreement. These contacts took the form of periodic meetings with the President of the Republic or his ministers and, in Mexico City, with the URNG General Command. The meetings with the Presidential Human Rights Committee (COPREDEH), which had been suspended in recent months, were resumed following the appointment of a new Committee Chairman. The Mission also increased its systematic contacts with various State authorities and entities involved in the protection of human rights.

4. In transmitting the fourth report of the Director to the General Assembly by his note of 24 March 1996 (A/50/878), the Secretary-General recommended that the Assembly should renew the Mission's mandate for nine months. In its resolution 50/220 of 3 April 1996, the General Assembly, inter alia, took note with satisfaction of the third and fourth reports of the Director and authorized the renewal of the Mission's mandate until 31 December 1996, in accordance with the recommendations of the Secretary-General.

5. After a year of negotiating, the Government and URNG signed the Agreement on Social and Economic Aspects and Agrarian Situation (hereinafter referred to as the Social and Economic Agreement) on 6 May 1996 (A/50/956, annex). At the signing ceremony, the United Nations Under-Secretary-General for Political Affairs congratulated the parties on behalf of the Secretary-General and confirmed that MINUGUA would verify compliance with the Agreement when it came into force.

II. CONTEXT IN WHICH THE MISSION IS OPERATING

6. During the period under review, and especially since the new Government headed by President Álvaro Arzú came to power on 14 January, the context in which the Mission operated underwent significant changes - some of which are discussed in other parts of this report - which had a positive effect on the human rights situation and compliance with the commitments of the Comprehensive Agreement.

7. These changes primarily concerned the peace process, legislative management and the political and administrative actions of the new Government.

8. In the peace process, the negotiations were given a fresh impetus by a climate of renewed confidence between the parties, which was reflected by the URNG declaration, on 20 March, of an indefinite suspension of hostilities, though its political propaganda efforts would continue; the Government, in turn, suspended its counter-insurgency actions. This new dynamism culminated in the signing of the Social and Economic Agreement, after which URNG stated that it would stop collecting the so-called "war tax". On 5 June, the parties began negotiations on strengthening civilian power and the role of the army in a democratic society.

9. In the area of legislation, the Congress of the Republic adopted a reform of the military code, making it inapplicable to members of the armed forces implicated in ordinary offences. With regard to the situation of indigenous peoples, the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169) was adopted by the Congress in March and ratified on 13 June. Also of note were the steps taken to reform the Penal Code to include the crime of racial and ethnic discrimination.

10. The Government's political and administrative actions included significant personnel movements in the military high command, including the retirement of some generals from active service; personnel changes in the police force; and operations that led to the capture of criminal gangs, some of which were involved in kidnappings. Pursuant to a government decision, the army also began to play an explicit role in fighting organized crime and ordinary offences. In addition, the Government appointed new heads of the Public Prosecutor's Office and COPREDEH.

11. Other important aspects of the context in which the Mission operated were noted in the areas of social conflict and the public debate on situations related to human rights and their international dimension.

12. Tensions rooted in the problem of land or labour disputes became more serious, particularly in cases where small-scale farmers invaded agricultural holdings and were subsequently evicted by the authorities. As a result of an attempted eviction on 17 April at the El Tablero farm in San Marcos, one police chief and one farmer were killed. A legal reform prohibiting strikes by employees of essential public services prompted protests and demonstrations by trade unions. As a result of one such demonstration, on 21 May, the President

of the Republic directed that the mobile military police should patrol the Congress.

13. In the public debate, the lack of public safety and the State's inadequate response to the situation were cited as factors that contributed to a climate which had been conducive to a series of lynchings, in late March in various parts of the country, of persons accused of crimes. In June, a wide-ranging national debate took place on the imposition of the death penalty for kidnapping, a measure supported by government officials and criticized by some human rights organizations. Another subject of public debate was the idea of a possible amnesty, in response to which a number of leading civic human rights organizations joined together to form the Alliance against Impunity. As a result of the debate, members of the Government and URNG said that they opposed a general amnesty.

14. The United Nations Commission on Human Rights considered the case of Guatemala. In its resolution 1996/59 of 19 April 1996, the Commission expressed its satisfaction with the boost given to the negotiations which sought to achieve agreements on the pending items on the agenda, with the corresponding mechanisms for verification; regretted the persistence of serious violations; recognized the positive role played by MINUGUA in promoting the peace process; and decided to request the extension of the mandate of the independent expert. Meanwhile, a mission from the United Nations Centre for Human Rights visited the country in late May and stated its intention to support programmes of technical assistance for the Counsel for Human Rights and the National Police. In that same month, the Government of the United States of America provided the Guatemalan Government with some 6,500 declassified documents containing information on human rights violations in Guatemala, primarily concerning United States citizens and their families.

III. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF FULFILMENT OF THE OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

Commitment I. General commitment to human rights

15. The parties continued to cooperate with and support the Mission, especially through periodic working meetings to answer enquiries on the verification and to put forward appropriate recommendations.

16. However, the verification process still faced a number of difficulties. The monitoring of due process and of the State's legal duty to investigate and punish violations was hindered by problems in gaining access to files in some cases and, in others, in attending judicial proceedings; the latter problem occurred even in serious cases such as that of the Xamán incident, although the obstacle was subsequently removed. In other cases, the intimidating conduct of members of the Voluntary Civil Defence Committees (CVDCs) and of former military commissioners hampered the verification process or the safety of Mission personnel.

17. By making this commitment, the Government reaffirmed its adherence to the principles and standards that guarantee and protect the full exercise of human rights. Therefore, the Mission is concerned about the fact that the Constitutional Court, in taking decisions on legal reforms that run counter to the American Convention on Human Rights, does not apply the principle that treaties take precedence over domestic law in the field of human rights, pursuant to article 46 of the Guatemalan Constitution (para. 67).

18. In the Comprehensive Agreement, the parties requested the Mission to receive, consider and verify complaints of human rights violations and to determine whether or not such violations had occurred. In previous reports, the Mission included statistics on the complaints admitted, classified by the right affected in each case, with a proviso as to the extent to which they formed the basis for its conclusions (A/49/856, annex, para. 27).

19. Taking only one complaint per case as a statistical reference made it hard to shed light on the full range of victims and human rights violations covered. To overcome that limitation and to provide a more representative assessment, the Mission perfected its methodology for recording and systematizing data from the verification process. To this end, it designed and set up a database for recording complete information on all the victims and human rights affected in each case reported. From now on, when the reports refer to violations, these should be understood to mean each violation of the human rights of each victim. This new methodology makes it difficult to draw comparisons with previous periods because of the differences in the statistical bases used.

Analysis of the verification of rights accorded priority under the Comprehensive Agreement

20. During the period, the Mission received about 2,700 complaints. Of these, 468 were admitted as cases for verification, involving 4,495 alleged violations (see appendix).

21. The first finding of the verification is the persistence of the climate of violence, intimidation and disregard for human life noted in earlier reports. The number of death threats and other threats recorded by the Mission remains high: 179 complaints of 1,327 violations, which, together with the many homicides, kidnappings and serious crimes attributed to common criminals or unidentified persons and not recorded as human rights violations directly attributable to agents of the State, show that the State is not fulfilling its obligation to provide guarantees or its legal duty to prevent, investigate and punish violations of these rights.

22. The right to life accounts for about 9 per cent of all alleged violations during the period under review. To date, 98 of the 390 violations reported have been found to have occurred; most of the other cases are still being verified.

23. The Mission is concerned about the lynchings and attempted lynchings which took place during the period, especially in the initial months of the year and primarily in the departments of Guatemala, Chimaltenango, Escuintla, Sololá, El Quiché and Petén. Although some of these killings may have been influenced

by persons or groups interested in creating more violence and unrest for political ends, there is no question that the population's profound lack of confidence in the effectiveness of the institutions in charge of investigating, trying and punishing criminals offers fertile ground for engendering such acts. These events point to a lack of awareness that, just as every person has the right to demand justice pursuant to the commitment to end impunity, so too does every person accused of a crime have the right to be presumed innocent, to have adequate means of defending himself in court and to receive only the punishment determined under the law and the judgement establishing his guilt.

24. In general, cases in which State agents and persons or groups linked to them are implicated in homicides are not adequately investigated; the reasons for this inaction range from professional incompetence to participation in a cover-up. This situation, together with the intimidation that surrounds such acts, prevents the Mission from obtaining enough information in the verification process to draw a conclusion. For example, of the 69 extrajudicial executions reported during the period, only six have been verified to date; in most cases it is impossible either to prove or to disprove the existence of a violation. Significantly, when the victim survives the attempt, the confirmation of participation by State agents increases considerably. Thus, of the 54 attempted executions reported to the Mission, 42 were verified and 39 were found to have violated human rights.

25. The disproportionate use of firearms by State agents, reflecting their disregard for human life and their insufficient preparation for using such weapons, is one of the most common causes of death. One of the cases which had the greatest impact on national and international public opinion was that of the death of Pedro Sas Rompiche on 4 February in Antigua, Guatemala. At first, it was portrayed as an attack on the President of the Republic, but verification revealed that the victim, who had been unarmed and sitting in his car, which was stopped at the time, had been shot at point-blank range by an officer of the Presidential General Staff. The ninth Court of Appeal changed the military judge's characterization of the crime as "unintentional homicide" to "extrajudicial execution" because it had resulted from the excessive use of force.

26. Death threats are one of the most common and representative manifestations of the climate of intimidation. Since they are usually issued orally with no witnesses present, or if witnesses exist they are unwilling to testify, such threats are difficult to verify. Thus, of the 267 death threats reported, only 53 could be established. Many of them, however, seem credible in the light of the backgrounds of the victims and the alleged perpetrators, the existence of previous cases and the presence of motives that have given rise to similar threats. The Mission will closely follow the work of the COPREDEH unit specially set up to give special protection to victims of serious threats, which was reactivated at the end of June by the new Committee Chairman.

27. With regard to the right to integrity and security of person, 1,267 complaints of violations were submitted; to date, 1,151 have been verified and 1,095 were found to have occurred. Most of the violations reported come under the category of other threats. With regard to torture, the Mission found that two of the eight violations reported did not occur; the rest are still being

investigated. However, half of the violations by reason of cruel, inhuman or degrading treatment were found to have occurred.

28. The violation of the right to integrity is usually related to the disproportionate or arbitrary use of violence by police officers who are arresting someone or enforcing a court order. When, the use of violence is out of proportion to the objective sought, a case of excessive use of force exists. Of the 116 alleged violations of this right, 103 have been investigated and 96 were found to have occurred.

29. Once a person has been arrested, the objective has been met and the use of force is unjustified. The seriousness of the practice of mistreating detainees is due not so much to its physical consequences as it is to the vulnerability and defencelessness of the victim, who is often seen as a person without rights. Of the 27 alleged violations related to this type of conduct which have been verified to date, 21 were found to have occurred. The Mission is equally committed to fighting impunity effectively and to ensuring respect for the rights of detainees, and rejects the rhetoric which claims that human rights only serve to protect criminals.

30. The treatment of detainees, or even the decision to arrest them, often depends on whether they belong to a given social or economic class or racial group, and whether they are members of certain State institutions, especially the army. One illustrative case occurred on 18 April in San Ildefonso Ixtahuacán, Huehuetenango, when Juana Velázquez García, of the Mam ethnic group, was mistreated, insulted for being indigenous and arbitrarily detained by the secretary of the municipal justice of the peace.

31. The Mission found that the right to individual liberty has been undermined by the actions or omissions of State officials. Of the 113 violations reported during the period, 50 have been investigated and 34 were found to have occurred.

32. According to modern penal doctrine, which tends towards greater respect for human rights and is reflected in the Code of Criminal Procedure, the arrest of an accused person cannot constitute punishment in advance of the judgement. Therefore, preventive detention should be an exceptional measure and the judge, under certain conditions, should grant alternative measures which do not entail deprivation of liberty.

33. The Mission has confirmed many cases where judges grant such alternative measures arbitrarily, thereby distorting the principle of equality before the law. This attitude has prevailed in serious cases that exemplify the problem of impunity, where there is evidence of the accused person's responsibility and resistance to justice. For example, on 30 April, after having been at large for a year, Raúl Martínez Pérez, the former head of the CVDC in Kaibil Balam, Ixcán, Quiché, turned himself in to the Second Court of First Instance of Cobán, and the associate judge immediately granted him an alternative measure. The measure was subsequently annulled by a higher court, but Martínez remains free.

34. Moreover, the verification process reveals that judges have used this practice in a discriminatory manner to foster the impunity of alleged perpetrators of serious violations and crimes and to neglect persons of scant

means who are accused of petty crimes. This is one of the reasons why the prison population basically consists of poor people, indigenous people and women. The State's response has been to enact legal reforms; however, the conduct of these judges (paras. 65 and 66) has not changed.

35. The policy on crime, which should focus on punishing the worst offences, is being seriously contradicted in many cases where persons are arrested for "criminal misconduct". According to the National Police, the number of persons arrested for this reason nationwide in 1995 approximated 45 per cent of the total; arrests for "drunkenness and breach of the peace" alone account for one third of all arrests made by the police. The verification process found that the procedure for punishing misconduct impedes the exercise of the right of defence and the real possibility of questioning the legality of the arrest, thereby undermining important guarantees applicable to detainees.

36. The failure to respect the right to individual liberty also arises from a lack of due diligence, and even negligence, on the part of officials of the judiciary, which results in the unreasonable prolongation of preventive detention. One extreme case which illustrates this phenomenon is that of Maximiliano Pérez Díaz, who was given a commutable sentence of one year in prison for a petty offence but was held for three years on the Canadá rehabilitation farm because of an administrative oversight on the court's part.

37. A number of reported incidents reflect the highly disturbing situation regarding the right to personal freedom of minors. The lack of proper facilities, the remoteness of juvenile courts, and the lack of vehicles are logistical shortcomings leading to illegal situations whereby minors are taken to police facilities or remain in detention with adults. However, most of the infringements result from police and court practices.

38. The State has two obligations regarding violations of and crimes against human rights. The first is to prevent, investigate and punish such acts, for which, according to the Comprehensive Agreement, the competent national institutions must function autonomously and effectively. However, these functions must also be carried out in accordance with the Constitution and with international norms regarding human rights; this is a second obligation which concerns legal guarantees as a whole, known as "due process of law". During the period covered by this report, 1,120 alleged infringements of these two obligations were reported.

39. The Mission has no mandate to verify violations which took place before it was set up on 21 November 1994. It is, however, expected to report on the current fulfilment by the State of its duty to investigate and punish such violations. One such example was the legal investigation of the complaint concerning the deaths of about 300 inhabitants of Cuarto Pueblo, Ixcán, which took place in March 1982; the progress of the investigation was impeded by the judge's excessive delays and insufficient cooperation by the National Police.

40. The Mission is keeping a close eye on the steps to reform the Law on Elections and Political Parties, which may help to solve some of the problems which have been verified and to widen the exercise of political rights. In addition, the rate of non-registration, which is about 30 per cent of persons

over 18, may decrease following the creation of a single personal identity document and the promotion of voter registration. Verification has also revealed differences by sex and by department in levels of documentation, concerning both identity and electoral documents, showing that steps need to be taken to overcome these shortcomings (A/50/482, paras. 71 and 72).

41. The exercise of freedom of expression continues to be adversely affected by high levels of violence and intimidation. In rural areas, the constraints are mostly due to the former military commissioners and the Voluntary Civil Defence Committees (CVDC), as far as the dissemination of human and indigenous rights is concerned. As for the freedom of the press, the most striking events have been attacks on journalists, particularly the kidnapping and torture of Vinicio Pacheco, of Radio Sonora, on 28 February. The authorities have not investigated the public complaint concerning the tapping of the fax line of the newspaper Siglo Veintiuno (A/50/878, para. 48).

42. Freedom of association entails respect for any person's decision to join an association of any kind or to leave it with no constraint other than that imposed by law. Of 64 alleged violations, 36 have so far proved to be justified. Many of the violations involving death threats or other threats against integrity and security of person made by members of the army, former military commissioners, or the CVDC, relate to this right, their purpose being to prevent people from leaving the CVDC or to force them to take part in patrols.

43. The right to set up and participate in a trade union is a means of exercising freedom of association which has been given special recognition and protection in international norms regarding human rights and in the Constitution and laws of Guatemala. Nevertheless, the Mission is still recording cases where employers have applied strong pressure to prevent the exercise of this right and where the State bodies responsible for guaranteeing and protecting it have failed to carry out their functions in a timely fashion and effectively.

44. A case in point occurred in the department of Petén, concerning staff representatives at the Kayser company, a subsidiary of BASIC Resources (a firm involved in the extraction and transport of petroleum, operating in Petén). Having been dismissed after attempting to set up a trade union, they received no protection from the labour tribunal, and abandoned their attempt in exchange for reinstatement.

45. In May 1996, the decree on Trade Unions and the Regulation of Strikes by State Employees was revised, to prohibit employees of public services which are declared to be essential from exercising their right to strike. They are now subject to compulsory conciliation and arbitration mechanisms. This reform, unlike the provisions of the Labour Code which was applicable previously, enables the State to cancel appointments and contracts without prior authorization from the labour judge when, in the case of a labour dispute, an employee's conduct constitutes grounds for dismissal, and in cases where a strike has been called and is actually taking place, provided that it involves the collective withdrawal of labour or affects an essential public service. The reform was challenged by the main trade union organizations, by means of an action of unconstitutionality and a complaint to the International Labour

Organization on the grounds that it contravened several labour rights. The Mission is monitoring the legal actions and complaints, inasmuch as they may affect freedom of association.

46. Infringements of freedom of movement have been verified in five cases, all of a collective nature. They concerned roadblocks, known as tapadas, or the seizure of farms or villages by the URNG for the purpose of disseminating political propaganda.

Commitment II. Commitment to strengthening institutions for the protection of human rights

47. The weakness of institutions for the protection of human rights is characterized by their insufficient presence in, or total absence from, large areas of the country, their structural shortcomings, and the pressures which restrict their independence, integrity and effectiveness. The Mission's work concerning this issue will be referred to in section V of this report. While it is the Government that made the commitment, implementation, particularly in respect of the weakness of the autonomous institutions, depends on the cooperation of these institutions with government measures.

48. The Mission continues to observe with concern the lack of coordination between the entities involved in the judicial process, whose responsibility it is to fulfil the State's duty to protect human rights. The absence of a criminal justice policy which integrates the bodies responsible for its implementation leads to tensions and public disagreements among institutions which were intended to function harmoniously. This reduces the capacity of the State's criminal justice system and gives an impression of inefficiency.

49. The normalization in the running of the Public Prosecutor's Office and the appointment of its new leadership, thanks to a considerable level of institutional and social consensus, is a positive sign which may lead to a strengthening of the institution and an improvement in the population's perception of its role.

50. The repeated threats and pressure to which judges and prosecutors are subjected demonstrate the urgent need to implement special protection programmes and to create proper coordination among State institutions for that purpose. A case in point was the murder of two investigators from the Public Prosecutor's Office on 3 May, on the road to El Salvador. They were making inquiries which were of a particularly dangerous nature and had considerable public impact. The legislative move to establish security procedures for officials of the bodies which administer criminal justice and for all those involved in legal proceedings has not progressed with the speed called for by the circumstances, and it is awaiting adoption by the Congress of the Republic.

51. The Mission is concerned at the continuing weakness observed in the functioning of the Public Defender's Office, which is thus failing to fulfil its mandate under the Constitution and human rights instruments.

52. The work of the Prosecutor is essential for the protection of all human rights. The supervision of the proper functioning of the criminal justice

system, the effectiveness of due process of law, and of the thorough fulfilment of the State's duty to prevent, investigate and punish human rights violations are central to the Prosecutor's authority. In this context, the Mission is particularly concerned at repeated death threats against the Prosecutor, made in the later part of the period covered by this report.

53. The Mission has noted that, in a number of cases, the Prosecutor's recommendations to the Ministry of the Interior in connection with abuses committed by members of the National Police have led to investigations by the Office of Professional Accountability of the National Police, and have in some cases led to the dismissal of those responsible. These positive signs, if they become the usual practice, will help to strengthen the Prosecutor's protective role and improve police credibility.

54. The purification process being carried out by the Ministry of the Interior and the leadership of the security forces is a major step in the professionalization of this State activity, and a positive development in the implementation of this agreement (see para. 74).

Commitment III. Commitment against impunity

55. In the current situation of impunity, the majority of serious crimes and human rights violations go unpunished. This is not because it is impossible to determine what has happened or to identify the perpetrators; it is due to the inefficiency of the national bodies responsible for investigation, judgement and punishment, as well as the influence that certain groups, mostly those connected with the State, have upon those bodies. This grave situation continues to be the greatest obstacle to the enjoyment of human rights in Guatemala.

56. This situation of impunity results both from the inadequacies and deficiencies of the National Police, the Public Prosecutor's Office and the judiciary, and from the fact that State officials or persons close to them take advantage of their State connections, not only to commit crimes and human rights violations, but also to impede their investigation and evade punishment.

57. The Mission has reported that, in view of the gravity, extent and complexity of this phenomenon, although it is the Government which actually made this commitment, the struggle against impunity is a shared responsibility of the various powers of the State. The new Government has shown its political will to tackle impunity and has adopted significant measures to that end. However, the Mission has not yet observed any integrated policy leading to decisive action against impunity.

58. One indication of the Government's determination to fulfil this commitment, in connection with the involvement of State officials in human rights violations and offences and in the cover-up thereof, was the removal from active service of several high-ranking army officers and a considerable number of members of the National Police. Should these individuals be brought to trial, when appropriate, it would contribute to the fulfilment of this commitment.

59. The Mission has also observed an increased determination and effectiveness in measures against illicit organizations involved in drug trafficking, car

theft, and above all in kidnappings, which may have benefited from the participation, support or complicity of State officials. There has been some success in arresting or in obtaining evidence against alleged members of these organizations, including some members of the army and the National Police. However, the authorities themselves admit that most of the leaders and the "brains" of the organizations are still at liberty.

60. During the last few months of the period covered by this report, the National Police managed to capture a considerable number of members of kidnapping gangs, and found evidence of participation or complicity on the part of State officials. It should be emphasized that, unlike the overall situation, this positive result has been achieved thanks to the correction of shortcomings pointed out by the Mission.

61. All persons and organizations have a legal and moral obligation to provide to the competent bodies any necessary information for the investigation and punishment of an offence. In this context, the information provided to the National Police by the army concerning kidnapping gangs represents a positive but limited change. The army's cooperation has been insufficient in the numerous cases of human rights violations and offences observed by the Mission in which military personnel or persons controlled or influenced by them, such as CVDC and former military commissioners, are reported to have taken part.

62. The National Police has stated that many alleged offenders have been arrested thanks to information provided by the population; it also reports that a number of witnesses have given evidence which led to convictions in cases which had considerable impact on public opinion. There have also been demonstrations against violence and impunity, such as those by the people of Escuintla and by the group known as "Madres Angustiadas" (Anguished Mothers), and movements have been set up, such as the Alianza contra la Impunidad (Alliance against Impunity), formed by persons and bodies connected with the promotion of human rights. This shows the citizens' increasing will to demand the protection of their rights by the competent bodies and to cooperate in the struggle against impunity, arising from their awareness of the dangers of the current climate of intimidation.

63. The Mission has, however, noted with concern the persistence or worsening of other manifestations, which, using methods no less violent and unpunished than the activities which the perpetrators claim to be combating, seek to take the place of the State in the struggle against crime and impunity rather than to cooperate with it. These include cases of a similar nature to so-called "social cleansing" operations, deaths caused by people taking the law into their own hands and mob lynchings. Because of the frequency and cruelty of the latter, the Mission is concerned at the apparent lack of State measures to investigate them (paras. 23 and 73).

64. The legal reform abolishing military jurisdiction over offences under the ordinary law and related offences committed by army personnel is a significant step forward, closely connected to the fulfilment of the third paragraph of this commitment and to the Mission's recommendations, and will contribute to the autonomy and freedom of action of human rights organizations.

65. The example of impunity which has the greatest popular impact and arouses the greatest mistrust of the courts among the population is perhaps the release or acquittal of individuals involved in serious crimes or human rights violations. Verification shows that, without precluding the role of pressure, corruption and intimidation, this is caused by excessively broad application of alternative sentences by certain judges and by lack of evidence due to insufficient investigative capacity among the competent bodies (para. 34).

66. Attempts have been made to deal with the situation by revising certain articles of the current Penal Code and Code of Penal Procedure, providing for more severe penalties for certain offences and restricting the benefits enjoyed by detainees as well as the breadth of their application by judges. Although this measure may help to fulfil the commitment, the worsening conditions of accused persons may endanger the effective protection of individuals from misuse of State authority, without protecting the rights of the victims of crime.

67. A case in point was the reform of the Penal Code in July 1995, instituting the death penalty for new cases of kidnapping. The measure was a response to the intense activity of kidnapping gangs, whose crimes remained unpunished. The Mission, the Office of the Counsel for Human Rights and other organizations have warned that this penal reform was incompatible with the American Convention on Human Rights and inapplicable under the Constitution (A/49/929, para. 23). It should be noted that, according to information from the National Police, the number of kidnappings has increased considerably since this reform came into force.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; commitment to continue with the purification and professionalization of the security forces; regulation of the bearing of arms

68. The existence on the fringes of State structures of organizations under various names, including the CVDC, which use civil insecurity as a pretext for exercising control over their local communities is a symptom and a consequence of the extension to civil society of the logic of internal armed confrontation, and a source of human rights violations.

69. It has been observed that the provision by the army of weapons, and instruction in their use, to members of the CVDC constitutes a serious obstacle to the commitment to regulate the bearing of arms by private citizens, and a factor which leads to the occurrence of acts of violence in many parts of the country.

70. The emergence of various civilian organizations that carry out surveillance patrols, establish curfews and make arrests has also been observed. Such groups exist, for example, in Comitancillo, San Marcos; in villages in Alta Verapaz; in Samayac and San Lorenzo, Suchitepéquez, and in Santiago Atitlán and San Lucas Tolimán, Sololá. Verification has shown that whatever their names and purported goals, these are armed groups which take upon themselves tasks which properly belong to the police force, and their activities, tolerated, influenced or controlled by State officials, adversely affect individual rights.

71. This situation is incompatible with the objective of strengthening the official security forces. The latter are lacking in the most basic necessities for dealing with crime; 41 of their officers lost their lives while on duty in 1995, and 28 during the current period.

72. The Mission has observed that because of the State's inability to protect the population there is a profound lack of confidence in the operation of justice, and this has encouraged people to adopt the dangerous expedient of taking the law into their own hands. In this context, the use of State resources for the provision of security and protection to private interests, as in the case of the Mobile Military Police (PMA), the use of military or police personnel to forcibly end personal disputes and the development of private security forces take away from the legitimacy of State action and reveal conceptual weaknesses in the field of public security; these matters require urgent review.

73. The Mission is concerned to find that bodies bearing bullet wounds are still turning up and that many of them are never identified. The common features of many of these cases (bullet wounds to the head, the fact that, in the few cases which have been submitted to ballistics experts, the wounds have been inflicted by weapons of the same calibre and that the bodies have been left in places frequently used as "body dumps") are all consistent with the modus operandi of the "social cleansing" operations referred to in previous reports. It is noted that the inaction of the organizations responsible for investigating the crimes is a common factor in all these deaths.

74. The characteristics of the significant numbers of kidnappings, vehicle thefts, and other illegal acts reflect different levels of criminal organization; State officials are frequently implicated, and must be prosecuted and removed from their posts. During the period covered by this report, the Ministry of the Interior has adopted important measures intended to fulfil the commitment to purify the security forces. Among these are the dismissal, in January, of 113 members of the National Police, and recently, of 25 members of the Treasury Police, as well as the commitment for trial of more than 100 police officers implicated in various offences and misdemeanours, including six homicides and two kidnappings. It has however been noted that the Government's efforts are facing considerable constraints, making it more difficult to remove those police officers implicated in actions incompatible with their profession.

75. The absence of general mechanisms for periodically evaluating police personnel, of standard procedures and inspections at all levels of the police force, and the absence of legislation properly regulating recruitment and continued employment in the police all conspire against the goal of making purification an inherent part of police operatiohs. Purification is thus left to the whims of the authorities, and is conducted on the basis of procedures not clearly laid down in law.

76. The shortcomings of the National Police in various proceedings and their chronic weakness in criminal investigation demonstrate the insufficient professionalization of the security forces. The Mission nevertheless welcomes the measures adopted for the strengthening of the National Police Academy which, despite serious budgetary constraints and lack of space, has begun the first

regular course for new officers, intended to set up a minimum standard of police training.

77. The Mission has stated that, in order to combat impunity effectively, it is essential to professionalize the National Police and that this, in turn, requires the separation of police and military functions. Government agreement 90-96, of 7 March 1996, established that the Ministry of the Interior would, through the civil security forces, draw up, implement and supervise all necessary public security plans, with the support of the army. The Ministry of the Interior informed the Mission that the participation of military personnel in police tasks would be restricted to preventive patrols. However, despite the Agreement, the Mission has observed not only that members of the army and of its intelligence branches have taken part in a number of operations which were clearly police tasks, but also that in some cases the army took the lead or acted first and independently, excluding the National Police.

78. Verification has shown the continuing proliferation of, and lack of control over, weapons in private hands. State efforts have basically been oriented towards confiscation, with little success, and they have not affected the illegal flow of arms across the frontiers or the excessive issuing of permits to own or carry weapons.

79. During the first five months of this year, there was a relative increase in the number of weapons confiscated by the security forces, particularly the National Police, which confiscated 1,108 weapons compared to 562 during the same period in 1995. Meanwhile, the number of permits issued remained fairly high; during the period covered by this report, it reached 7,181, half of which were permits to carry weapons. The legal measure raising to 25 the minimum age for obtaining a permit to carry weapons is not a restriction that has any impact on the underlying problem. Because of the limited results of the actions that have been taken, the great majority of weapons are still in private hands illegally.

Commitment V. Commitment to guarantee freedom of association and freedom of movement

80. The Counsel for Human Rights reported that, during the period under review and in keeping with the procedure established under the Comprehensive Agreement, he had verified cases of withdrawal from or dissolution of Voluntary Civil Defence Committees (CVDC) involving only 300 members, a remarkably low figure given that the total current membership in these Committees is more than half a million. The limited recourse to this procedure by those who no longer wished to continue in the Committees is attributable to a general unawareness of its existence, to encouragement of the mistaken belief that patrolling is compulsory and, more particularly, to pressure and fear of reprisals. The Counsel proposes to draw the attention of the recently elected mayors to the procedure.

81. While the Government has formally fulfilled its commitment not to encourage the organization or arming of new Voluntary Civil Defence Committees, the Mission has nevertheless recorded new instances of pressures, intimidation and fines against individuals wishing to withdraw from or stop patrolling with the CVDCs. In other cases, as in the Ixil area, the army has encouraged the continued operation of the CVDCs by various means, for example by not explaining

that participation is voluntary and not compulsory. In other cases, military personnel have used the pretext of combating alleged criminal activity or the actions of renegade groups of URNG to encourage the reactivation of CVDCs and the establishment of other types of armed groups.

82. As regards complaints of human rights violations received during the first five months of this year, the Counsel reported that many CVDC members and former military commissioners were involved in such violations. The Mission's own verification supports the Counsel's claims.

83. Unlike the former Civilian Self-Defence Patrols (PACs), the CVDCs have no formal and legally established relationship with the army. In reality, however, CVDCs are comprised of former PAC members who exhibit the same behaviour and maintain the same links with the army. Consequently, the population still conceives of these organizations as, and continues to refer to them as, PACs and to their members as patrols; in referring to them, the press, and even the State authorities, employ both terms without making any distinction between them. In view of the possibility that CVDCs may violate human rights, the Comprehensive Agreement took into account the Committees' historical links with the army and, consequently, attributes responsibility for their actions to the State.

84. The Counsel has taken note of the continued strong military influence on the conduct of many CVDCs, and the Mission has verified that most cases of intimidation to prevent withdrawals from CVDCs involve their leaders and former military commissioners, both of whom continue to be viewed in the communities as figures of authority, in view of the support which they receive from the army. It has also been noted that both CVDCs and former commissioners are still being invited to meetings held at military bases.

85. It is against this background that the Mission has noted with concern the emergence of a growing number of organizations whose establishment was encouraged or supported by the army and whose membership includes former military commissioners and CVDC members. These new organizations have other formal names and objectives (committees for the strengthening of peace and development, defence committees, etc.), but their practices, the fact that they are armed and their relations with the army are frequently the same as those of the PACs and CVDCs. The Mission will continue to monitor developments in this area (para. 70).

86. Lastly, the Mission will continue to closely follow the course of the process of dissolution of the CVDCs, which, as the Ministry of Defence has announced, will begin in July 1996.

Commitment VI. Commitment concerning military conscription

87. The Government has continued its policy of suspending compulsory military conscription and maintaining voluntary service, pending the entry into force of a new law governing military service. During the period under review, two cases of compulsory military conscription have been investigated, and one of them was confirmed.

88. In this connection, the Mission has taken note of the discussion in the Congress of the draft law on patriotic service, which seeks to harmonize the elements of military and social service with the various draft laws that have been submitted.

Commitment VII. Commitment to safeguard and protect individuals and entities working for the protection of human rights

89. During the reporting period, serious incidents were verified which pointed to the urgent need for the Government to adopt measures to fulfil its commitment to protect persons and entities working for the promotion and safeguarding of human rights.

90. Of particular note was the murder of Miguel Uz Mejía and Lucía Tiu Tum, human rights activists belonging respectively to the "Runujel Junam" Council of Ethnic Communities and the Guatemalan Widows' Coordinating Committee, which took place on 4 January in Santa Lucía Reforma, Totonicapán. The authorities responsible for the investigation of this crime have not acted with the effectiveness and speed which the case merits.

91. The Mission has noted that intimidation of and threats against human rights institutions and activists continue. During the month of February, the Bishop of San Marcos, Monsignor Ramazzini, and attorneys from the human rights office of the local bishopric, were threatened with death. Death threats, which were possibly related to the death of the priest Manuel Saquio (A/50/878, para. 43 (g)), were also received by members of the Kaqchiquel Presbyterian Church in Chimaltenango from an organization calling itself "Jaguar Justiciero".

92. One positive development is that during the period under review no attempts were made by senior military officers in their public statements to identify as subversive activities aimed at protecting and promoting human rights. Nevertheless, verification indicates that such statements are still being made in certain areas and by certain authorities and army officials, particularly by CVDCs and former military commissioners. As long as this type of statement continues to be made, the entities and individuals concerned will continue to be particularly vulnerable.

93. This attitude on the part of organizations associated with the military and their members, which is based on the logic of counter-insurgency and control over the civilian population, undermines not only the duty of the State to protect and guarantee freedom of thought and association, but also the right to life and integrity of those who promote respect for these values.

94. The Mission noted the absence of special measures to protect victims and the cursory nature of investigations into the origin of these threats. The exception has been the investigation of the threats against the Kaqchiquel Presbyterian Church (para. 91), into which the Public Prosecutor's Office has ordered a thorough investigation.

Commitment VIII. Commitment to compensate and/or assist the victims of human rights violations

95. The lack of any provisions for compensating the victims of human rights violations through the judicial system makes it even more important to fulfil the commitment given by the Government to assist victims through the adoption of civil and socio-economic measures and programmes and to grant due priority to those most in need on account of their economic and social situations.

96. During the period under review, legislation aimed at creating the regulatory framework within which this commitment could be fulfilled was submitted and is currently awaiting discussion in Congress.

Commitment IX. Commitment concerning human rights and the internal armed conflict

97. The willingness of the parties to limit and subsequently suspend their hostilities has lent impetus to the fulfilment of this commitment and boosted confidence in the peace process.

98. The Mission received no reports of injury to individuals or damage to civilian property as a result of actions taking place in the context of the internal armed conflict. As regards the reports of attacks against military detachments in the area of Ixcán, verification has confirmed that shots were fired, but no information was obtained on their source or on the parties responsible.

99. URNG has declared that the suspension of its offensive actions did not extend to political propaganda. The Mission has noted that the cessation of offensive actions has been accompanied by an increase in the number of cases of occupation of villages and farming communities for the purpose of holding political meetings. In some places, sections of the population have complained of a feeling of insecurity and threat because of the fear that clashes would result from the army's reaction to the presence of guerrillas.

100. Reports of threats received for the first two months of the year in connection with the collection of the so-called "war tax" declined somewhat, but a marked increase was noted in March and April. This activity was also carried out in areas where it was not a common practice, such as Izabal department, and reports have also been received of cases involving alleged collections by guerrillas which in reality were the work of criminal gangs. The drop in complaints after May coincides with the announcement on 9 May by the URNG General Command that it had instructed all fronts to cease all "activities or actions related to requests for voluntary collaboration". The order has been progressively implemented since then, with a few isolated cases persisting in Alta Verapaz, Santa Rosa and Jutiapa. In any event, it is noteworthy that no reprisals have been reported recently against the physical integrity of individuals or against the property of those refusing to comply.

101. The Mission views with concern the new modus operandi of URNG in the area of the Polochic valley, involving the theft or appropriation of weapons in the

possession of CVDCs, since this could give rise to clashes with serious consequences for the civilian population.

102. URNG fulfilled the commitment, made by it on 29 January during the periodic meetings in Mexico between the Mission and the General Command, to inform the Mission of the areas in which abandoned explosive devices of no operational value might be located. That information was transmitted to the Government. URNG has also begun to fulfil its commitment to withdraw or deactivate these devices, and has carried out demining of the area in San Marcos department; in order to prevent any confrontations, the army was notified of this action. Despite this progress, five accidents resulting from the detonation of explosive devices were reported during this period, causing three deaths and one wounded among military personnel and injuries to three civilians.

Displaced persons, refugees and returnees

103. The resettlement process continues to encounter problems arising from the landholding system, the influence of the ideological discourse maintained by members of the army and by persons under its influence which identifies returnees with URNG, tensions between returnees and non-returnees and, in some cases, the fear that there might be explosive devices in areas close to their destination.

104. The process of return has continued, although at a markedly slower pace. According to figures from the Office of the United Nations High Commissioner for Refugees (UNHCR), during the first six months of the year 2,599 refugees returned home, a figure which represents only about 27 per cent of the total number of refugees who returned home between January and December 1995.

105. Of particular importance was the signing, in June 1996, of the Framework Agreement between the National Peace Fund (FONAPAZ), the Comunidades de Población en Resistencia (communities of populations in resistance) of la Sierra and the Pro Tierra (land defence) committees of Chajul, Quiché, which will enable about 3,400 families to be resettled in that department.

106. The Mission is organizing a series of workshops in Ixcán as part of the project to strengthen local civil authorities, with the aim of providing the latter with information on the Mission's capacities and limitations as well as on its relationship to the law, human rights and other institutions, such as mayors, justices of the peace and international organizations.

IV. AGREEMENT ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

107. The Mission notes and agrees with the statement by the parties to this Agreement "that the question of identity and rights of indigenous peoples is a vital issue of historic importance for the present and future of Guatemala".

108. In Guatemala, a multi-ethnic and multilingual country, peace will be firm and lasting and human rights will be fully respected only if due recognition is given "to all aspects of the identity and rights of the peoples who have inhabited and who continue to inhabit it, all of whom are components of its

present reality and protagonists in its development" (A/49/882-S/1995/256, annex, preambular paragraphs). In order to achieve this goal, it is necessary to overcome the various forms of discrimination and inequality and the limitations that constitute obstacles to the full exercise of the rights of indigenous peoples and to their political participation.

109. Accordingly, the Mission greatly appreciates the fulfilment by the Government of its commitment to speed up the approval of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169). Following its approval by the Congress, the President of the Republic and the Minister of Labour submitted the letter of ratification to the International Labour Organization on 14 May. Although the Convention will formally enter into force in June 1997, the Government has already taken steps to prepare for its implementation, such as the establishment of a Convention 169 unit within the Ministry of Labour and Social Welfare. The Mission also welcomed the Government's introduction in October 1995 of an initiative to reform the Penal Code to include the offence of discrimination on racial and ethnic grounds.

110. The new draft organizational law prepared by the Office of the Chief State Counsel, which provides for the establishment of a department of indigenous affairs to act on the State's behalf in defence of the indigenous population, is also a welcome development.

111. The Counsel for Human Rights, with support from the Mission, has elaborated a work plan for his programme on behalf of indigenous peoples which seeks to: (a) put an end to discriminatory practices against indigenous peoples and individuals; (b) guarantee the practical enjoyment and exercise of human rights and fundamental freedoms; and (c) promote respect for and recognition and promotion of the historical and specific rights of indigenous peoples.

112. While the dissemination by the Government of the Agreement on Identity and Rights of Indigenous People is still insufficient, the Ministry of Education, with the collaboration of the Mission, has shown great interest in and made a special effort to conduct training for public-school teachers in Huehuetenango. The national radio has also shown a willingness to broadcast programmes on the Mission's campaign in San Marcos free of cost.

113. For its part, the Guatemalan Academy of Mayan Languages, with support from the Mission and from the United Nations Educational, Scientific and Cultural Organization (UNESCO), has completed the translation of the Agreement into nine indigenous languages.

114. During the reporting period, the Mission has noted no significant progress in the preparation of the legal reforms provided for in the Agreement, nor any progress towards the creation of mechanisms for participation by and consultation with indigenous organizations. Despite the Government's initiatives, it was unable to establish a Government entity to coordinate the implementation of the commitments, and made no systematic efforts to approach the Maya sectors of the Assembly of Civil Society in order to pave the way for the establishment of joint commissions.

115. Particularly serious aspects relating to the exercise of human rights by indigenous peoples were noted in the cases and situations verified by the Mission. These included: (a) the low level of access to the system of administration of justice and, in particular, the failure to respect the right to have interpreters and translators, which would permit indigenous peoples to enjoy on equal terms judicial guarantees in criminal matters; (b) the failure of the State and society at large to provide effective controls and valid measures with respect to human rights violations; (c) poor enforcement of the constitutional and legal guarantees relating to the recognition and enjoyment of their fundamental freedoms. A situation illustrative of these shortcomings has been observed on agricultural estates, including some in the Polochic valley, Alta Verapaz, where the indigenous population living there are denied enjoyment of the human rights recognized by the Constitution and laws of Guatemala, without any attempt being made by the State to remedy the situation.

116. The Mayan elements of the Assembly of Civil Society, working together in the Coordinating Office of Organizations of the Maya People of Guatemala (COPMAGUA), have embarked on a campaign of consultations and dissemination of the Agreement in different regions of the country. They have announced a schedule of activities to convene Maya, Xinca and Garifuna organizations interested in participating in the joint commissions. Particularly noteworthy was the review of the proposals for joint commissions, including the proposal made by the National Council of Mayan Education concerning educational reform. The Mission will be monitoring the results of these initiatives, which are expected to pave the way for the creation of the joint commissions.

117. On 26 April, the Rafael Landivar University and the Mission signed an agreement for a research project on indigenous customary law which, with the assistance of a council of Mayan advisers and in close collaboration with indigenous organizations and authorities, seeks to achieve legal recognition and application of the law of the Mayan peoples.

118. The Mission also undertook dissemination and training activities in all its regional offices. As part of its direct dissemination activities, it served 13,280 people, of whom 256, for the most part indigenous, were trained as extension workers. Radio broadcasts of the Agreement were also begun in Spanish and in 15 indigenous languages.

V. SUPPORT FOR INSTITUTION-BUILDING WITH RESPECT TO HUMAN RIGHTS ORGANIZATIONS

119. This section covers the key issues being dealt with by the institution-building programme, the strategic content of the Mission's work in them and the main actions taken in accordance with its mandate and within the operational framework of the MINUGUA/UNDP Joint Unit.

120. Support for institution-building grew considerably during the period, as a result of the generous contribution of international cooperation: Denmark, the Netherlands, Norway, Sweden and the United States of America contributed to the Trust Fund for the Guatemalan Peace Process, while the European Union, Spain, the United Kingdom and Venezuela provided personnel and materials.

121. This support, in the circumstances of a country that is now putting an end to a long internal conflict, is facing major challenges which may be grouped into two main categories: the first concerns the way in which the Mission organizes its verification and institution-building activities, and the second is linked to the national capacity to absorb the support for institution-building and thus the sustainability of those activities.

122. In accordance with its mandate, the Mission is conducting its verification and institution-building activities in a coordinated and complementary manner. The design of the institution-building projects contains features intended to remedy the shortcomings of the verification process. While the two functions are mutually reinforcing, the timing of their implementation is different: the shortcomings which have been verified can be remedied only if the projects achieve success in the medium term. In this process, verification provides feedback and guidance for institution-building activities by obtaining information on the impact on the institutions and the changes brought about through progress on the projects in question.

123. The country's absorptive capacity depends on the nature of its national institutions, which are, generally speaking, extremely weak and, in certain areas, completely lacking. The vast territorial and sectoral areas in which the presence of the State is non-existent or ineffective require support for institution-building. The Mission's decentralized projects are aimed at fulfilling this objective (para. 143).

124. Where institutions are already in place and strengthening them requires significant changes to be made, one fundamental difficulty lies in the impediment to the entity itself formulating its agenda of issues to be resolved, based on a review of the resources available compared with the objectives to be achieved. This suggests that the national actors have not yet succeeded in carrying out a global critical review of the institutions involved in the protection of human rights which might serve as a basis for an effective will to implement reforms and for proposing meaningful changes.

125. If the level of this cooperation should decline, the sustainability of the actions undertaken and the achievements attained inevitably require the active participation of national actors as a condition for effective action. As its contribution to this goal, the Mission is pursuing the following basic objectives: (a) to increase the installed capacity to absorb the support provided through international cooperation, without at the same time fostering dependence on such cooperation; (b) to reduce the difference in speed between the flow of international cooperation and the response of national entities; and (c) to promote the establishment of dynamic core groups of professionals within institutions who could gradually assume responsibility for the process of change.

126. The consolidation of the rule of law in Guatemala requires institution-building to change the structure and functioning of a series of institutions with indelegable responsibilities. Nevertheless, the Mission's projects only seek to create an enabling environment for change to take place so that this process of consolidation, which is the responsibility of Guatemalans, will be possible. The process requires a cultural shift that would create, promote

consensus on and periodically renew a public agenda of reforms to be undertaken, executed and amended. Only thus can support for institution-building succeed in becoming a catalyst for the process, through the contribution of the international community to the peace process, which should not only be increased but should also be made more effective and coordinated, in order to ensure its consistency with the decisive national effort.

127. Institution-building activities are concentrated on various institutions in the country. The following five areas in which the Mission is carrying out various projects and activities are considered to be of strategic importance: public safety, equality before the law and access to justice, independence of the judiciary, protection of human rights in the judicial system and promotion of a culture of human rights.

Public safety

128. The Mission observed that, in the context of a high incidence of criminality, the State is not fulfilling its duty to provide guarantees and protect human rights (para. 21). In order to deal with this situation, measures must be taken to improve the performance of the various State institutions responsible for guaranteeing and protecting such rights.

129. A civil police force capable of carrying out its mission and exercising its functions with respect to the law and human rights throughout the country is required. To that end, there must be, first and foremost, a clear-cut division of competences, the absence of which is currently giving rise to abuses of power by the police in their work; adequate training and appropriate control of the personnel to prevent human rights violations; and absolute separation of the police and military functions. To that end, it is also necessary to have a budget for redefining their institutional bases.

130. The institutional restructuring of the police should be based on a philosophy of service with a view to protecting the rights of each individual. As a guarantor of public order and an aid to the Public Prosecutor's Office in the investigation of crime, the police force should ensure internal peace and the safety of the citizens, and in so doing it is empowered to make legitimate use of force when absolutely necessary. Such action should be subject to effective internal controls, since only jurisdictional bodies are empowered to review the legality of police actions.

131. Criminal investigation by the police must be carried out strictly within the limits of their mandate, under the direction of the Public Prosecutor's Office and subject to judicial controls over the penal process. Other institutions may not participate in this undertaking.

132. The Mission is helping to improve the National Police by providing five police observers who have begun their work in police training and criminal investigation. At the Police Academy, it supports an institutional model which facilitates the training and selection of officers in accordance with objective criteria appropriate to their functions. Advisory services were provided for the organization and conduct of the first six-month basic course for new officers. The Mission recommended the implementation of a system of shifts

within the Identification Bureau and the Department of Criminal Investigations in order to improve the coordination of investigations both internally and with the Public Prosecutor's Office.

133. In order to combat impunity effectively, there must be an end to the shortcomings repeatedly identified by verification, such as the lack of coordination between the prosecution and the investigatory police, and the inordinate amount of time that elapses between the commission of the crime and the time the prosecution opens the case. This delay aggravates the difficulties in carrying out a successful investigation and ensuring effective criminal prosecution.

134. The Mission is cooperating with the training programme of the Public Prosecutor's Office, which offers courses at two levels: one which provides prosecutors with information on the direction, organization and administration of the Office of the Attorney-General, and another which gives them specialized training in criminal investigation and improves their ability to devise investigation and prosecution strategies and to direct the work of the police. With the participation of the Public Prosecutor's Office, the technical correction of the Prosecutor's Manual was completed and there are plans to adapt it for use in training courses.

135. The handling of cases in the Public Prosecutor's Office, both in the capital and elsewhere in the country, continued to be monitored, with emphasis on those which were significant for human rights. Technical assistance was provided in certain cases which had a social impact and were settled in court in recent months.

Equality before the law and access to justice

136. The verification activities of the Mission made it apparent that the principle of equality before the law was not being applied; this becomes glaringly obvious when attempts are made to bring to justice persons or groups with great influence over the system of administration of justice, among them, some members of the army. Serious procedural shortcomings have led to selective impunity and punishment as a result of the discriminatory use of the discretionary powers of officials (paras. 30 and 34).

137. The Mission, through the Programme for Institutional Assistance for Legal Reform (PROLEY), provides technical and human rights support to the legal reforms which are being promoted in Congress. Among them are the Penal Code, military jurisdiction, the Children's Code and the enactment of laws which guarantee respect for cultural differences in accordance with the Agreement on Indigenous Rights.

138. The adoption of a new Penal Code is aimed at developing a penal system which efficiently punishes illegal acts and protects individual guarantees. The system is based on the criterion of rationalizing the use of State penal power by offering such options as: (a) punishing crime that has a high social cost and reducing the severity of punishment for less serious crimes; (b) avoiding discrimination against the more vulnerable sectors, such as women and indigenous people; (c) scrupulously respecting constitutional guarantees such as the

principles of legality and guilt; and (d) guaranteeing the rational and egalitarian implementation of the law.

139. The Mission cooperated technically with the Congress of the Republic and assisted non-governmental organizations (NGOs) in reforming the system of administration of military justice (para. 64).

140. The problem of unequal legal treatment of children lies in the absence of an integral system of protection which provides a set of guarantees for children and limits the power of the State (para. 37). The Mission has cooperated with the Legislative Commission on Children, Women and the Family of the Congress of the Republic on various aspects of the possible adoption of the Children's Code. With the cooperation of the European Union, through its programme entitled "Street children", a study was conducted on the economic and social impact of adopting the code; its findings were submitted to the authorities of the Congress, and formed the basis for the legislative debate on the subject.

141. A major barrier to ensuring equality before the law is the lack of genuine respect for cultural diversity, not only in the form of de facto discrimination, as identified by verification, but also in the existing law. The country is home to a number of cultures which do not agree on which acts should be considered legal and which illegal. To punish an act originating in a culture where it is socially acceptable and does not violate human rights - as occurs today - constitutes a serious form of failure to respect cultural difference, which is a basic human right. The topic is being analysed with a view to the contents of the possible new Penal Code, which would take this phenomenon into account in defining a policy on crime that is more attuned to the situation on the ground.

142. The Mission has maintained, based on the verification carried out, that the difficulties encountered by the people in gaining access to the judicial system on an equal footing constitute a serious obstacle to the effectiveness of the rule of law. The indigenous sector is the most seriously affected. The obstacles to access to the justice system are recognized in the Agreement on Indigenous Rights as one of the causes of discrimination (para. 115).

143. The Mission, in cooperation with government bodies and local NGOS, is cooperating in order to overcome the cultural and economic barriers which bar access to the justice system through four lines of action:

(a) The mechanism of popular law offices, currently operating in Santa Cruz del Quiché and planned in El Petén and Nebaj, is designed to provide indigenous peoples with free legal advice and representation in order to defend their rights, and prepares community legal aid workers to provide guidance to the people;

(b) Activities such as awareness-building and dissemination of the country's multicultural reality, through the Mission's regional offices, addressed to officials of the system of administration of justice;

(c) The project entitled "Administration of Justice and Linguistic Pluralism", which promotes the use of Mayan languages and a bilingual justice

system, has been operating since April as a pilot project in Quezaltenango San Marcos and Totonicapán;

(d) The Centre for the Administration of Justice to be built in Nebaj will include a court of first instance, a trial court, a prosecutor's office, a Public Defender's Office, a National Police station and a legal aid office. The Centre, a joint project of the institutions of the judicial system, is being supported by FONAPAZ, the municipal mayors' offices, the Counsel for Human Rights and community organizations. Its objectives are to provide infrastructure, overcome linguistic problems, train system operators, disseminate information to the population and lay the administrative groundwork for the implementation of these activities.

Judicial independence

144. The system of justice and the judges, in particular, are the targets of much public criticism for a performance which Guatemalan society considers unsatisfactory. The common features of the judges' and magistrates' profile which is criticized are: (a) their insufficient training; (b) the fact that they owe their appointments to friendship or influence; (c) hierarchical subordination to the judge/magistrate of a court of higher instance, which undermines judicial independence; (d) legalistic/ritualistic handling of cases; (e) the transfer of some of their duties to assistant officials who have gained practice and can handle the increased case-load.

145. Owing to the grave situation of criminal violence, whose extent and effects on human rights have been verified by the Mission, judges are driven by social expectations to punish rather than to provide guarantees. Under the rule of law, in addition to carrying out his duty to punish, the judge must guarantee that the citizens' rights are protected from any abuse of power. This protective role is in keeping with the leading role the judge should play in the defence of human rights.

146. The many cases observed by the Mission indicate that, without judicial independence, there is no hope of the judges properly fulfilling their duties to punish and provide guarantees. In order to achieve such independence, there must be no internal or external interference. However, under the current circumstances, independence must be built on actions such as the establishment of careers in the judiciary based on a competitive and transparent merit system.

147. The system of appointments based on candidates' ability, like the system introduced in the Supreme Court of Justice in March to fill the posts of trial judges, is fundamental to guaranteeing not only better-quality officials but also a solid base of autonomy and security in the performance of their duties.

148. The work initiated by the Mission at the Judicial Training School is aimed at ensuring that the School plays a central role in the process of selecting and training judges. Its training needs are being determined on the basis of a survey of judges all over the country and the analysis of a sample of several hundred court decisions. In the first course for aspiring judges offered by the School with the support of the Mission, new teaching materials were introduced with the active participation of the candidates, and evaluation methods that

stressed case decisions were employed. A total of 48 trial judges will be appointed as a result of the first two selection courses.

149. This progress needs to be institutionalized through the establishment of careers in the judiciary. This implies taking responsibility for, inter alia, the selection and appointment of judges, the disciplinary system, and the internal organization of the judicial branch in view of the special nature of the jurisdictional function. The Mission, under the agreement signed in April with the Congress of the Republic to provide technical assistance to the legislature in its work, prepares reports on relevant draft legislation under discussion and reviews the consequences which mechanisms such as the Office of General Court Supervision of the Supreme Court could have on internal judicial independence, and is providing technical support to a commission which will propose a draft law.

Protection of human rights in the system of administration of justice and through NGOs

150. Protection in the system of administration of justice covers both the victims and the accused perpetrators of crimes. Verification has brought to light serious deficiencies. Overcoming them is the aim of activities to provide support to institution-building in four areas: the Counsel for Human Rights, the Public Defender's Office, the penitentiary system and NGOs working in this area.

151. In order to carry out his essential role, the Counsel for Human Rights must have broad powers to conduct an independent investigation (different from those of the National Police and the Public Prosecutor's Office) of alleged human rights violations. Similarly, he must be able to monitor the conduct of the administration of justice in the investigation and punishment of such violations. In order to cooperate in the strengthening of the Counsel's Office, the Mission is implementing a project to help organize its department of investigation which provides for its expansion, the establishment of regional offices in four areas of the country and the initial and continuing training of its personnel.

152. The Programme to Support the Strengthening of the Public Defender's Office has two aspects: a qualitative one which seeks to strengthen the role of the Public Defender in the penal process through on-the-job training and the design of handbooks and the foundation for a basic law regulating the Office; and a quantitative one which provides for an increase in the number of defenders. A strengthened penal public defence system is essential in order for the penal process to be truly adversarial, to afford the parties equal means and opportunities and, hence, to offer greater promise of being fair and in accordance with law, and to decrease arbitrariness against victims and those presumed responsible.

153. The Mission observed the deterioration of human rights in the jail system. It therefore carried out the Programme for the Improvement of the Penitentiary System in conjunction with the Ministry of the Interior. The programme has a diagnostic component and will also be able to propose legislation.

154. The role of human rights NGOs has been crucial in Guatemala's history. These organizations have managed to remain attuned to the expectations and concerns of Guatemalan society and have contributed to the process of social change in recent years. In order to gain a deeper and broader understanding of their situation and needs and to support their transition towards professionalization in new areas, the MINUGUA/UNDP Joint Unit performed a diagnosis and drew up a plan of action for the strengthening of the NGOs. On this basis, six main lines of action were identified: (a) strengthening of coordination and networks; (b) training in how to invoke legal rights; (c) strategy and administration; (d) investigation, verification, reporting and proposals; (e) educational activities; and (f) conflict resolution and reconciliation.

155. The Mission has carried out activities to support the strengthening of some NGOs through their direct participation in various research and consultancy projects on numerous themes of importance to human rights.

Human rights culture

156. The status of human rights in Guatemala is paradoxical. On the one hand, texts such as the Constitution of the Republic, the primary school curriculum or the Educational Programme on Democratic Culture and Human Rights accord human rights a priority place and lay special emphasis on disseminating knowledge of them. On the other hand, as indicated in the Mission's verification work, de facto there is still a strong streak of intolerance and discrimination in the country, which diminishes the chances of achieving peaceful coexistence, and a culture of violence prevails. In this context, defending human rights is said to amount to defending criminals, the death sentence is proclaimed to be the solution to the crime wave and there are instances, which are not strongly condemned in the press, of criminals being lynched as an alternative means of dispensing justice.

157. In this context, in order to promote a human rights culture, the treatment accorded to the topic of the death penalty takes on emblematic value. Contrary to the international and regional trend as expressed in the relevant international instruments, in Guatemala the voices calling for the death penalty appear to be winning the day, and unfortunately, they have been heeded by the authorities (para. 67).

158. The educational system in general, and particularly in the field of human rights, is operating in a context devoid of the basic elements necessary for the attainment of its objectives. The various bodies working to promote human rights do so according to institutionally defined objectives and do not coordinate effectively with the others in a concerted effort.

159. The Mission has conducted training programmes for persons who could potentially disseminate the theme of human rights: outreach workers, teachers, catechists, community leaders and state officials seeking a better understanding of the new penal legislation, have been the priority target audiences. A network of such disseminators has been established, and the target audiences were broadened to include the security forces through courses for army

instructors and support for police training programmes. Support was also given to these disseminators for their work with the population at large.

VI. CONCLUSIONS

A. General conclusions

160. The Mission concludes that, during the period under consideration, there was tangible progress in fulfilling the commitments assumed in the Comprehensive Agreement. However, this progress was not sufficient to bring about substantial change in a situation characterized by grave human rights violations and persistent impunity.

161. The progress achieved in the peace negotiations and the temporary suspension of offensive and counterrevolutionary activity have created new conditions capable of permitting decisive progress in fulfilling the commitment to eradicate the suffering the internal armed confrontation has caused for the civilian population and of building confidence in the peace process.

162. The efforts made by the Government of President Arzú demonstrate its willingness to combat crime and impunity; they include measures initially designed to accelerate the purification of the security forces, progress in the prosecution of serious crimes in which members of the army and the police appear to be implicated, and firmer attempts to capture members of kidnapping rings.

163. The abolition of military jurisdiction in respect of common and related crimes committed by members of the military represents a major step forward in the fight against impunity and a major stride in the strengthening of institutions for the protection of human rights, as it is conducive to their autonomy and freedom of action.

164. These positive changes, coupled with the progress which has already been consolidated, show that, with political will and decisiveness by the parties, the Comprehensive Agreement can be fully implemented.

165. Nevertheless, in the Mission's view, the situation has not changed more significantly for, inter alia, the following reasons: (a) the persistence of a climate of violence, insecurity and disrespect for human life; (b) the alarming number of threats, deaths, kidnappings and serious crimes for which responsibility has not been assigned; (c) the power still retained by groups organized to commit crimes and human rights violations which have alleged ties to State officials; and (d) the people's lack of confidence in the effectiveness of the institutions responsible for investigating and punishing crimes, which encourages them to take the law into their own hands.

166. The Mission, reiterating concepts discussed in previous reports, concludes that some of the causes of the difficulties described above are: (a) the lack of an integral policy against impunity; (b) the defective functioning of the judicial branch, the Public Prosecutor's Office and the security forces; (c) insufficient cooperation from the army with these bodies when its members appear to have been involved in illegal acts, and indeed the protection it

affords such persons; (d) the alarming proliferation of and failure to control firearms in the possession of private individuals; and (e) the tenuous social awareness that every person accused of a crime has inalienable human rights, including the presumption of innocence.

167. The Mission, aware that full compliance with the commitments in the Comprehensive Agreement is a difficult task, but faithful to its mandate to take its decisions on the basis of all information supplied by verification, believes that, in the short term, the activities undertaken must be intensified, and other recommendations formulated by the Mission must be considered. In this way, the risk of reversing positive developments can be avoided and the beneficial effects which the agreement on a firm and lasting peace will have on national reconciliation can be ensured.

B. Conclusions of the verification of the general commitment to human rights, in particular those rights considered to be a priority in the Comprehensive Agreement, and of the commitment to guarantee and protect persons and bodies working for the protection of human rights and the work they carry out

168. These commitments are closely linked. Therefore they are dealt with together.

169. The right to life continues to be seriously undermined. The enjoyment of this right is more difficult because agents of the State and persons or groups linked to them are known to be perpetrators of civilian homicides and the institutions involved are not carrying out proper investigations.

170. Even though complaints of torture have decreased, the large number of violations of the right to integrity and security of person show that the Government has not fully guaranteed this right, especially where cruel, inhuman or degrading treatment by State agents is concerned. The Mission expresses its concern at the clear signs of discrimination against the indigenous population that have emerged from the verification of several cases.

171. The right to individual liberty is not fully guaranteed, as shown by the discriminatory application of preventive detention. A high percentage of the prison population is composed of persons accused of petty crimes whose guarantees have been violated. In other, serious cases, however, in which there is evidence pointing to the liability of the defendant and his contempt of court, release has been granted, generating a lack of confidence in the justice system among the population.

172. The situation in the country's prisons does not appear to have received much attention. While prisoners' rights constitute one of the areas under the direct supervision of the State, such rights are routinely ignored in the prisons. The Mission is especially concerned at the situation of children who have been incarcerated in prisons marked by logistical inadequacies and situations that violate their rights.

173. Verification has revealed violations of minimum guarantees of due process affecting, in particular, the right to a defence, the right to be presumed innocent, the right to appeal and the right to be assisted by an interpreter. This last right has assumed great importance because of the country's multilingual character.

174. The State continues to fail in its obligation to ensure that serious crimes against persons are properly investigated and punished, as shown by the unwarranted delays in the investigations carried out by the Public Prosecutor's Office and in the basic proceedings that must be certified by judges.

175. The verification of due process arising from the deaths of a number of persons in Xamán shows that there are serious difficulties in investigating and punishing this extremely grave act. The Mission believes that, without the firm cooperation of the military authorities in this process, a situation of impunity could arise which would have very serious consequences for Guatemala.

176. The Mission is concerned at the threats directed against several members of the Guatemalan Congress. The proper discharge of the important public responsibilities of elected officials is a paramount factor in the exercise of political rights.

177. The Mission expresses its concern at serious complaints of intimidation directed against journalists during the period under review which affected the full guarantee of freedom of expression and have not been properly investigated.

178. The Mission considers that URNG improperly restricted freedom of movement during some of the propaganda activities which it carried out during the period under review.

179. As regards freedom of association, obstacles are frequently placed in the path of persons who attempt to form or join a trade union, such as pressure from employers, which the State institutions responsible for guaranteeing and protecting this right do not address in a timely and effective way.

180. The Mission believes that the lack of a mechanism for the peaceful resolution of conflicts of varying origin leads to situations that can affect all the human rights of the parties to such conflicts. The Mission appreciates the fact that, in the Agreement on Social and Economic Aspects and the Agrarian Situation, the Government undertook to establish and apply flexible judicial or non-judicial procedures for the settlement of disputes relating to land.

181. The Government has adopted no special measures to safeguard and protect individuals and entities working for the protection of human rights. This is combined with the virtual lack of investigation into the origin of the intimidation and threats directed against such individuals and entities.

182. The message that identifies the work of promoting human rights with subversive activities is being kept up in certain regions, especially by some members of the army and the voluntary civil defence committees and former military commissioners. While this rhetoric continues, individuals and entities engaged in such work will remain particularly vulnerable.

C. Conclusions of the verification of the commitments to strengthening institutions for the protection of human rights; against impunity; that there are no illegal security forces and clandestine structures; to continue with the purification and professionalization of the security forces and the regulation of firearms; and to guarantee freedom of association and movement

183. It is obvious that the Government took a major step in deciding to investigate, arrest and prosecute State agents involved in serious crimes and to take action against illicit associations, linked especially to kidnappings of individuals, which might be able to count on the participation, support or complicity of such agents; the supreme leaders of such gangs, however, remain at large.

184. The Mission draws attention to the central role that the population has played in several of these cases, and to the numerous demonstrations which reveal a growing civic determination to cooperate, through lawful means, in the fight against crime.

185. In the Mission's view, the suspension from service of 113 members of the National Police involved in illegal acts, and the committal for trial of some 100 others, are signs of the Government's determination to comply with its commitment to purify the security forces. Nevertheless, the final dismissal of those involved is facing major hurdles.

186. The Mission believes that, unless rapid progress is made in the purification and professionalization of the police forces, it will be very difficult to deal adequately with the challenge of adjusting public security to the requirements of the peace process.

187. Even though a greater readiness was seen on the part of the army to collect information on cases submitted by the Mission, the latter has, with concern, verified instances in which the army continues to extend protection to its personnel who have been implicated in crimes.

188. While the Government is a signatory to these commitments, the efficacy of its compliance also depends on the cooperation provided to its initiatives by other entities, such as the judiciary and the Public Prosecutor's Office.

189. Affirming its complete understanding that the judiciary is an independent power, while stressing that the fight against impunity is a responsibility of the State in its entirety, the Mission expresses its concern at judicial attitudes and decisions which encourage impunity and deserve to be rectified in the appropriate spheres.

190. Moreover, the absence or inefficiency of the investigation and judgement of numerous human rights violations and serious crimes is due not only to limitations and flaws in the functioning of the police, the Public Prosecutor's Office and the judiciary, but also to the fact that State agents and persons

linked to them use their relationship with the State to perpetrate such illegal acts, hinder their investigation and evade appropriate punishment.

191. Notwithstanding the above, the Government's compliance with the commitment to supporting and strengthening institutions for the protection of human rights is still highly inadequate, as shown by the absence or weak presence of such institutions in wide areas of the country and the fact that the bodies responsible for implementing this commitment lack a comprehensive policy in criminal matters.

192. The Mission continues to be concerned at the persistence of threats and pressures directed against judges and prosecutors which are, in and of themselves, an attack on the independence of the judiciary.

193. The regularization of management practices in the Public Prosecutor's Office and the first steps taken by the new Public Prosecutor to streamline the Office constitute, in the Mission's view, signals that will contribute to the strengthening of this institution.

194. The Mission considers that among the factors needed for an improvement in public safety are a police system answerable to civilian authority and capable of discharging its responsibilities within the framework of the rule of law and respect for human rights.

195. The fact that the army's participation in police activities was not limited to cooperation with the police and that, in some cases, it extended to a preventive and autonomous role in which the police were marginalized, underscores the need to professionalize the security forces on the basis of a distinction between military and police functions.

196. The tolerated existence of organizations of varying origins and names which carry out functions relating to public order and public safety outside the institutional framework of the State indicates non-compliance with commitment IV, i.e., that there are no illegal security forces.

197. The State's inability to guarantee protection and security through mechanisms consistent with the rule of law, and the population's lack of confidence in the administration of justice, have given rise to these organizations. Their existence is further encouraged, however, by the persistence of a concept of civil self-defence that is inconsistent with advances in the peace process.

198. Notwithstanding the Government's announcement concerning the imminent dissolution of the voluntary civil defence committees, during the period under review the Mission found that members of the army, driven by a logic inherent in the armed conflict, have promoted or supported the revitalization of such committees and the establishment of other types of armed organizations.

199. The Mission is deeply concerned at the continuation of this practice, which, given the army's historic influence over such committees, undermines the primacy of civilian authority and also affects the human rights situation, in

that members of the voluntary civil defence committees and former military commissioners are implicated in numerous complaints of human rights violations.

200. Moreover, the inaction of the institutions responsible for investigating the appearance in public places of abandoned corpses, whose common characteristics conform to the modus operandi of "social cleansing" operations, supports reasonable doubts as to the existence of the clandestine structures referred to in commitment IV of the Comprehensive Agreement.

201. The use of State resources to promote the safety and protection of private interests and the strengthening of private security robs State action of its legitimacy and indicates weaknesses in the concept of public safety that must be eliminated as a matter of urgency.

202. The series of reprehensible acts of private vengeance directed against persons accused of committing serious crimes reveals the extent of public lack of confidence in the justice system. The Mission is concerned that it knows of no action taken to investigate such incidents.

203. The Mission considers that the deterioration of the conditions in which defendants are held pending trial, and the lengthening of sentences, could have a generalized adverse impact on the protection of individuals against the arbitrary use of State power, while paradoxically failing to achieve the declared aim of protecting the human rights of crime victims.

204. Criminal sanctions, however drastic, will not have the dissuasive effect intended if they do not convince potential wrongdoers that there is a strong likelihood of their being identified, arrested, tried and found guilty. The Mission has found that, after the amendment to the Code of Criminal Procedure which prescribed the death penalty for the crime of kidnapping in certain situations came into force, the kidnapping rate did not fall, but rather increased significantly.

205. The lack of a more clearly defined policy of support for the Public Defender's Office shows a weakness in the governmental commitment to strengthening institutions for the protection of human rights.

206. The attention given by the Government to several recommendations made by the Counsel for Human Rights concerning abuses committed by National Police agents is a positive token of compliance with the commitment to strengthening the Counsel's role.

207. The Mission believes that the appointment of the new Chairman of the Presidential Human Rights Committee (COPREDEH) can contribute to a substantial improvement in the activity of this institution. One positive sign has been the revitalization of the body established to extend protection to persons who have been threatened.

208. As to the commitment to regulate the bearing of arms, the Mission expresses its deep and grave concern, on the threshold of the culmination of the process of peace negotiations, at the alarming percentage of Guatemalan civilians who carry firearms. An armed civilian population does not contribute to pacifying

society or controlling crime; rather, it introduces elements of greater unrest and is a causal factor in the level of crime and violence in the country. Only the strengthening of the security forces under the supervision of the institutions that uphold the rule of law and their dedication to fighting crime while safeguarding human rights will succeed in eliminating the climate of violence and lack of public safety. In this regard, the Mission reiterates that any effort to reduce the number of weapons in private hands will be ineffective unless there is a halt to the excessive granting of licences to bear arms.

D. Conclusions of the verification of the commitments concerning military conscription; compensation and/or assistance to victims of human rights violations; and human rights and the internal armed conflict

209. These commitments relate to the internal armed conflict and its consequences.

210. To the extent that the temporary suspension of hostilities by URNG and the cessation of counter-insurgency operations by the Government are being observed, the potential dangers to the civilian population have been considerably reduced, along with the possibility of suffering and harm.

211. Nevertheless, the occupation by URNG of residential areas and rural hamlets for the purpose of holding political rallies generated a feeling of insecurity among sectors of the civilian population, who felt threatened by the presence of the guerrilla forces.

212. The Mission appreciates, as an encouraging step, the decision by the URNG General Command to suspend collection of the "war tax", and believes that this measure should have a positive impact on the human rights situation in Guatemala and should also increase support for the peace process. It expresses its concern, however, at the fact that, despite the instructions issued by the General Command to its fronts to suspend all activities and practices related to collection of the "war tax", this tax is still being collected in some departments.

213. The Mission notes that in the recent period there has been no record of reprisals against the physical integrity or property of those who have refused to pay the tax.

214. URNG complied with the commitment to report to the Mission concerning areas in which abandoned explosive devices of no practical interest could be found, and with the commitment to remove or deactivate such devices, by demining the area in which the department of San Marcos is located.

215. While a commendable effort has been made by the National Fund for Peace, the fact that a plan of action, recommended in previous reports, to compensate and/or assist victims of human rights violations has still not been drawn up allows the Mission to conclude that compliance with commitment VIII of the Comprehensive Agreement has not advanced.

216. The Government's sustained compliance with commitment VI of the Comprehensive Agreement, in that it has upheld the suspension of military conscription, is of far-reaching significance for the achievement of a firm and lasting peace.

E. Agreement on Identity and Rights of Indigenous Peoples

217. The Mission is highly appreciative of the Government's compliance with the commitment to promote the approval of the International Labour Organization's Convention No. 169 concerning indigenous and tribal peoples in independent countries, which has been approved and ratified by the Congress.

218. The Mission concludes that, during the period under review, no significant progress was made in the preparation of the legal reforms provided for in the Agreement or in the establishment of mechanisms to promote participation by and consultation with indigenous organizations.

F. Support for institution-building in relation to bodies for the protection of human rights

219. The cooperation provided for institution-building in relation to the Mission has grown substantially during the period under review, in accordance with the priority given to those issues which, as shown by verification, are now viewed as central to the development of a fully fledged rule of law in Guatemala.

220. The Mission believes that the strengthening of an institutional framework which genuinely guarantees the enjoyment of human rights depends on the effort made by Guatemalans to bring this about. The projects developed by the Mission are aimed solely at cooperating in this long and complex strengthening effort by channelling international assistance to the Guatemalan peace process.

221. The strengthening of activities to support institution-building assumes that the national authorities will take the steps required to provide financial backing for the continuation of such activities, which will be reflected in the budget for the following year.

VII. RECOMMENDATIONS

222. The Mission believes that Guatemala is going through a critical period in which genuine compliance with the commitments in the Comprehensive Agreement has become a matter of utmost urgency. In this regard, it recommends to the Government that, taking into consideration the conclusions in this report and all the recommendations in the previous ones, it pay special and urgent attention to combating impunity, putting an end to the illegal security forces, strengthening the bodies for the protection of human rights, extending protection to individuals and entities working to promote these rights, and putting a stop to the proliferation of weapons in private hands.

223. The Mission proposes to add the following to all the recommendations addressed to the Government in previous reports, most of which remain fully valid:

(a) Undertake a far-reaching and comprehensive initiative which includes: (i) suspending the excessive granting to individuals of licences to carry firearms while measures aimed at severely restricting such activity are being enacted; (ii) stepping up the efforts to impede the illegal flow of arms across the borders; and (iii) issuing strict instructions to monitor the weapons of disbanded and inactive voluntary civil defence committees so as to prevent their transfer to similar organizations;

(b) Adopt measures, prior to the signing of the Agreement on a Firm and Lasting Peace, and without detriment to the legal dissolution of the voluntary civil defence committees, to eradicate and put a stop to the establishment of organizations of varying names and origins, including some of those established to replace disbanded voluntary civil defence committees, which carry out State functions, such as security or public order, outside the institutional framework of the State. This recommendation encompasses the recommendation that the Government issue instructions to the army to prohibit its personnel from promoting or supporting organizations of this type;

(c) Redouble the efforts to enforce the demobilization of the military commissioners, including dissemination throughout the country of the circular issued to clarify all the consequences of this measure, in order to put a stop to continuing abuses by those who formerly exercised such functions;

(d) Investigate and punish acts of private vengeance against persons suspected of committing crimes;

(e) Adopt, within its sphere of competence, a set of measures to enable the Public Prosecutor's Office to play the role assigned to it, with a view to: (i) establishing hierarchical supervision over the National Police and other security forces; (ii) preventing interference from other State entities in the Office's work; (iii) providing the necessary institutional support to prosecutors who are responsible for cases involving human rights violations; and (iv) protecting the physical integrity of the Office's personnel;

(f) Formulate a policy on the strengthening of the Public Defender's Office which can enable it to comply fully with the mandate conferred on it by the Constitution and the major human rights instruments, as the entity responsible for guaranteeing the basic principles of due process;

(g) Establish mechanisms for disseminating and promoting the Law on the Personal Documentation of the Uprooted Population, and organize training and documentation seminars with a view to overcoming the lack of basic documentation affecting women, especially indigenous women, in rural areas;

(h) Give consideration, in the programming, planning and compliance activities envisaged in the Agreement on Social and Economic Aspects and the Agrarian Situation, to programmes and measures of a civil, social and economic nature which require compliance with the commitment to assist and/or compensate victims of human rights violations;

(i) Take the preliminary steps required to ensure that genuine compliance with the Agreement on Identity and Rights of Indigenous Peoples commences as soon as the Agreement on a Firm and Lasting Peace is signed.

224. Concerning the recommendation on the Public Prosecutor's Office (subparagraph (e) above), the Mission calls upon the Public Prosecutor to participate in following up the measures that require his involvement, including: (i) streamlining the organization of the prosecutors' offices to ensure that they deal mainly with cases having the largest impact; (ii) establishing a career service within the Public Prosecutor's Office and providing it with an efficient disciplinary system; (iii) implementing the planned reorganization of the metropolitan prosecutor's office and the shift system; and (iv) endeavouring to establish new prosecutors' offices in remote areas.

225. International verification activity has entered a period in which greater attention must be paid to the decisions taken by the Government on the Mission's recommendations. The progress that has been verified and the advances in the peace negotiations are generating new needs for verification to which the Mission must respond in pursuance of its mandate.

226. The Mission recommends to the URNG General Command that it:

(a) Instruct its members to adopt sufficient safeguards in carrying out propaganda activities so as to avoid causing danger or fear to the population or damage to its property;

(b) Instruct its fronts to refrain from confiscating or taking possession of weapons that are in the custody of the voluntary civil defence committees;

(c) Demand genuine compliance by all of its combatants with the instruction to suspend collection of the "war tax".

Final thanks

227. I should like to reiterate thanks to the parties, without whose cooperation the Mission would have been unable to comply fully with its mandate.

228. I also express appreciation, once again, to the Group of Friends of the Guatemala peace process, and to the international community, for their steadfast support for the Mission's work.

229. Lastly, I thank the agencies and programmes of the United Nations system for the cooperation which they have provided to the Mission's activities. On this occasion, I express my special appreciation to the United Nations Volunteers Programme and to the Governments of Spain, the Netherlands and Belgium for financing volunteer posts. The fact that the Mission is chiefly composed of United Nations volunteers of varying nationalities, who have travelled to the country to cooperate in this solidarity effort undertaken by the international community, shows the increasingly important role that the Programme plays in the achievement of the Organization's goals.

APPENDIX

STATISTICS ON HUMAN RIGHTS VIOLATIONS DURING THE PERIOD
FROM 1 JANUARY TO 30 JUNE 1996

	Complaints admitted a/	Violations alleged	Violations verified	Violations corroborated
RIGHT TO LIFE				
Extrajudicial executions or deaths in violation of legal guarantees	61	69	13	6
Attempted extrajudicial executions	19	54	42	39
Death threats	101	267	91	53
Total	181	390	146	98
RIGHT TO INTEGRITY AND SECURITY OF PERSON				
Torture	4	8	2	0
Cruel, inhuman or degrading treatment	7	10	9	5
Ill-treatment	39	73	27	21
Excessive use of force	12	116	103	96
Other threats	78	1 060	1 010	973
Total	140	1 267	1 151	1 095
RIGHT TO INDIVIDUAL LIBERTY				
Arbitrary detention	14	66	23	18
Detention in violation of legal guarantees	7	21	14	13
Kidnapping	9	16	7	2
Hostage-taking	0	0	0	0
Enforced disappearance	1	4	4	0
Forcible, unjust or discriminatory recruitment	2	6	2	1
Total	33	113	50	34
RIGHT TO DUE PROCESS				
Procedural guarantees				
Right to be presumed innocent	0	0	b/	b/
Right to be judged by a competent, independent and impartial judge	1	1	b/	b/
Right to be judged within a reasonable period	2	7	b/	b/
Right to a defence and to be assisted by a lawyer	2	5	b/	b/
Right to be assisted by an interpreter	2	3	b/	b/
Right not to be compelled to testify against oneself	0	0	b/	b/
Right to appeal	0	0	b/	b/
Right of habeas corpus	0	0	b/	b/
Right of access to the justice system				
Obstruction of the work of the National Police, the Public Prosecutor's Office and the Judiciary	7	512	b/	b/
Legal obligation on the part of the State to investigate and punish	55	590	b/	b/
Right to compensation	0	2	b/	b/
Total	69	1 120	b/	b/

/...

	Complaints admitted a/	Violations alleged	Violations verified	Violations corroborated
POLITICAL RIGHTS	3	4	3	2
Total	3	4	3	2
RIGHT TO FREEDOM OF EXPRESSION	1	4	2	0
Total	1	4	2	0
RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY	7	64	43	36
Total	7	64	43	36
RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE	5	882	879	873
Total	5	882	879	873
OTHER VIOLATIONS IN THE INTERNAL ARMED CONFLICT				
Harm or suffering inflicted on civilians	28	648	634	100
Attacks on civilian property	1	2	1	1
Attacks on property essential to the survival of the civilian population	0	0	0	0
Acts of terrorism	0	1	1	0
Failure to protect health workers and religious workers	0	0	0	0
Participation of children under 15 in the internal armed conflict	0	0	0	0
Lack of protection and assistance for wounded, captured and disabled combatants	0	0	0	0
Total	29	651	636	101
Grand total	468	4 495	2 910	2 239

a/ The number of complaints in each category changed during the verification process.

b/ Corroborated violations of due process are not being tabulated while the cases are being tried.

UNITED NATIONS MISSION FOR THE VERIFICATION OF HUMAN RIGHTS AND COMPLIANCE WITH THE COMMITMENTS OF THE COMPREHENSIVE AGREEMENT ON HUMAN RIGHTS IN GUATEMALA (MINUGUA)
Regional boundary
MINUGUA Headquarters
Regional office
Regional sub-office
MEXICO
BELIZE
HONDURAS
EL SALVADOR
PACIFIC OCEAN
Gulf of Honduras
PETÉN
L. del Tigre
L. Perdida
L. Petén Itzá
SANTA ELENA
Pasión
Cantabal
Barillas
HUEHUETENANGO
Sierra de los Cuchumatanes
QUICHÉ
Sierra de Chamá
ALTA VERAPAZ
COBÁN
Sierra de Santa Cruz
IZABAL
El Golfete
Puerto Barrios
Lago de Izabal
Motagua
SAN MARCOS
SANTA CRUZ del QUICHÉ
BAJA VERAPAZ
Salamá
EL PROGRESO
Sierra de las Minas
ZACAPA
Chiquimula
CHIQUIMULA
QUETZALTENANGO
SOLOLÁ
GUATEMALA
Guastatoya
JALAPA
Jalapa
Mazatenango
RETALHULEU
ESCUINTLA
SUCHITEPÉQUEZ
Escuintla
Quilapa
Jutiapa
JUTIAPA
SANTA ROSA
Airport
The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.
92°
91°
90°
14°
17°
16°
Map No. 3839 Rev. 2 UNITED NATIONS
September 1995
Department of Public Information
Cartographic Section